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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/381,143 | 10/22/1999 | IAN CHARLES OGILVY | CU-2003 | 3561 |

7590 02/12/2003

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EXAMINER

NGUYEN, PHUOC H

ART UNIT PAPER NUMBER

2143

DATE MAILED: 02/12/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/381,143

Applicant(s)

OGILVY, IAN CHARLES

SC

Examiner

Phuoc H. Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on November 25, 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 and 16-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 and 16-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other:

DETAILED ACTION

1. This office action is in response to request for reconsideration filed on November 25, 2002.
2. Claims 1-12, and 16-21 are presented for further examination.

Response to Arguments

3. Applicants argue that the cited reference (Stern et al.) teach away from applicant's invention. It is not persuasive.

In response to Applicant's argument that Stern et al. reference is actually implemented in hardware, the law of anticipation requires that a distinction be made between the invention described or taught and the invention claimed. It does not require that the reference "teach" what the subject patent teaches. Assuming that a reference is properly "prior art," it is only necessary that the claims under consideration "read on" something disclosed in the reference, i.e., all limitations of the claim are found in the reference, or "fully met" by it. *Kalman v. Kimberly-Clark Corp.*, 218 USPQ 789.

Claims 1, 16, and 18 are taken for illustration purpose. Stern reference disclose a virtual machine means which includes a virtual function processor and function processor instructions for controlling operation of the device, and a virtual message processor which is arranged to be called by the function processor and which is arranged to carry out the task of assembling, disassembling and comparing messages, whereby when a message is required to be handled by the communications device the message processor is called to carry out the message handling task (col. 6, lines 53-59 and col. 7, lines 1-6; col. 7, 2nd paragraph; col. 10, last paragraph; and col. 12, 2nd paragraph). Stern reference disclose in detail about all of the functions are controlled by the Java Virtual Machine which is a software program.

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Applicants still have failed to clearly disclose the novelty of the invention and identify specific limitation which would define patentable distinction over prior art.

Claims 2-12, 17, and 19-21 are rejected at least by virtue of their dependency on independent and by other reasons set forth in the previous office action [see Paper No. 9]. Accordingly, rejections for claims 1-12, and 16-21 are presented as below.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

2. Claims 1-12, and 16-21 rejected under 35 U.S.C. 102(e) as being participated by Stern U.S. Patent 5,935,249.
3. Referring to claim 1,16, and 18, Stern reference discloses a virtual machine means which includes a virtual function processor and function processor instructions for controlling operation of the device, and a virtual message processor which is arranged to be called by the function processor and which is arranged to carry out the task of assembling, disassembling and comparing messages, whereby when a message is required to be handled by the communications device the message processor is called to carry out the message handling task (col. 6, lines 53-59 and col. 7, lines 1-6).
4. Referring to claim 2, 17, 19-21, Stern reference discloses a virtual protocol processor arranged to organise communications to and from the device, and protocol processor instruction means arranged to provide directions for operation of the protocol processor means (col. 7, 2nd paragraph).

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5. Referring to claim 3 and 5, Stern reference discloses the device includes a microprocessor which runs in accordance with native software code, and the message processor is implemented as the native software code of the microprocessor (col. 9, lines 26-47); and the function processor is implemented as native code of the microprocessor (col. 9, 2nd paragraph).

6. Referring to claim 4, Stern reference discloses the device includes a microprocessor which runs in accordance with native software code and the protocol processor is implemented as a native software code of the microprocessor (col. 7, lines 63 through col. 8, lines 9).

7. Referring to claim 6, Stern reference discloses the message instruction means includes a set of descriptions of message data (col. 7, lines 59-62).

8. Referring to claim 7, and 9, Stern reference discloses the message processor instruction means is implemented in software defined by the message processor, wherein the device includes a microprocessor, and wherein the message instructions means do not require translation to the native software code of the microprocessor (col. 5, 3rd paragraph); and the device includes a microprocessor which runs in accordance with native software code, and wherein the function processor instruction means are implemented in software defined by the function processor means and do not require translation to the native code of the microprocessor (col. 5, 3rd paragraph).

9. Referring to claim 8, Stern reference disclose the device includes a microprocessor which runs in accordance with native software code and wherein the protocol instruction means are implemented in software defined by the protocol processor means, and do not require translation to the native code of the microprocessor (col. 5, lines 49-56).

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10. Referring to claim 10, Stern reference discloses a hardware abstraction layer comprising a series of routines which provide an application program interface to exercise an operating system, BIOS or hardware drivers of the device (col. 11, lines 16-22).

11. Referring to claim 11, and 12, Stern further discloses the device is a specialized network access device arranged for communicating over a network (col. 2, lines 41-51); and the device being a remote payment terminal and the messages being messages relating to remote payment transactions (col. 9, lines 32-40).

12. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Conclusion

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Wilkinson U.S. Patent 6,308,317 discloses using a high level programming language with microcontroller

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Nguyen U.S. Patent 5,931,917 discloses system, method, and article of manufacture for a gateway system architecture with system administration information accessible from a browser

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phuoc H. Nguyen whose telephone number is 703-305-5315. The examiner can normally be reached on Mon -Thu (7AM-4:30PM) and off every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David A Wiley can be reached on 703-308-5221. The fax phone numbers for the organization where this application or proceeding is assigned are 703-746-7239 for regular communications and 703-746-7238 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-3900.

Phuoc H. Nguyen
Examiner
Art Unit 2143

July 8, 2002


DAVID WILEY
SUPERVISORY PATENT EXAMINER
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